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Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20445

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

In the Matter of	)	
	)	
Federal-State Joint Board	)	CC Docket No. 96-45
on Universal Service	)	
	)	
Tennessee State Department	)	Applicant ID No.
Of Education	)	145698
	)	
Application (FCC Form 471)	)	Universal Service Control
for Approval of Funding	)	No. 144790000000004

To: The Commission

Administrator, Schools  
and Libraries Corporation

**THIRD SUPPLEMENT TO OBJECTION TO APPLICATION  
AND REQUEST FOR EXPEDITED DECLARATORY RULING**

Integrated Systems and Internet Solutions, Inc. ("ISIS 2000") hereby supplements its pending "Objection to Application and Request for Expedited Declaratory Ruling," ("Objection") filed April 3, 1998, to address the impact of the revised funding priority rules (Section 54.507(g)) adopted in the Commission's Fifth Order on Reconsideration and Fourth Report and Order, CC Docket 96-45, FCC 98-120, released June 22, 1998 ("Fourth R&O") on the Tennessee State Department of Education's ("Department's") pending application.

In the Fourth R&O, because applications for funding are now expected to exceed available funding by a substantial

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margin, the Commission revised Section 54.507(g) to prioritize the allocation of funding based on the service or product category requested. Funding priority will be given for telecommunications services and Internet access service. After all reimbursement requests are satisfied with respect to these two service categories, remaining USF funds will then be made available for internal connections, beginning with the neediest schools and libraries (i.e. those with 90% and 80% discount levels) until all funds are exhausted. Based on these new rules of priority, the SLC and the Commission have now estimated that funding requests for internal connections from applicants below the 80% discount level will not be funded during the initial 18-month USF program term. Fourth R&O, ¶¶ 3, 37-38; See also Report to Congress, FCC 98-95, released May 8, 1998, at Attachment D.

From the standpoint of the fair and lawful distribution of USF funds, the method by which an applicant has categorized its Form 471 funding request is thus very critical to the integrity of the funding process. An applicant (especially a lower discount level applicant) who has followed the rules and correctly categorized its funding request among telecommunications services, Internet access service and internal connections stands to be negatively affected by the priority rules. But on the other hand, an applicant who has ignored accepted category boundaries and bundled requested funding under the single umbrella of telecommunications service or Internet access service would

not be affected, and in fact could obtain a significant advantage over the applicant who followed the rules.

In creating the Schools and Libraries program, the Commission did not simply invent these categories without regard to the distinct type of services or equipment to be funded. The three categories are based on long-established and widely-accepted telecommunications and Internet industry practices, reflecting the following elements:

- (1) Internal Connections - Equipment and wiring on the premises of the customer (e.g., routers, servers, csu/dsu, and/or inside wiring) purchased from an equipment vendor or a service provider for a non-recurring (one-time) charge. See Schools and Libraries Eligible Services List.
- (2) Telecommunications Services - Transmission services (e.g. ISDN, T-1, dial-tone) provided by a telecommunications service provider connecting the customer-owned equipment at the customer site to the overall telecommunications network and/or the Internet service provider ("ISP") point-of-presence ("POP"). Id. In the Telecommunications Act of 1996, Congress defined "telecommunications" as "the transmission, between or among points, specified by the user, of information of the user's choosing, without change in the form or content of the information as sent or received."<sup>1</sup> 47 U.S.C § 153 (1998).

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<sup>1</sup> In a recent Report to Congress re: Universal Service, CC Docket No. 96-45, FCC 98-67, released April 10, 1998 ("the Report"), the Commission reaffirmed the significant distinction between telecommunications service and "information service," which is defined in the Telecommunications Act as:

the offering of a capability for generating, acquiring, storing, transforming, processing, retrieving, utilizing or making available information via telecommunications. 47 U.S.C. § 153 (1998).

In the Report, the Commission suggested that the utilization of telecommunications service in the delivery of information services does not make the telecommunications service an information service. The Commission took the position that "the provision of leased lines to Internet service providers . . . constitutes the provision of interstate

- (3) Internet Access Service - Information services provided by an ISP, usually at its POP, enabling access to the overall Internet network. The service is typically billed as a recurring monthly charge separate from the costs for telecommunications services and not including the provision of customer-premises equipment.

By completely ignoring the Commission's established criteria and bundling all three distinct categories of service under the umbrella of "Internet access", the Department's Form 471 Application would completely frustrate the revised priority rules. The Department has requested 69% reimbursement (\$14,333,134) for \$20,772,658 in purported charges for Internet access service to be provided during the period July 1, 1998 through December 31, 1998 pursuant to contract with Education Networks of America ("ENA"). No funding is requested for telecommunications services nor for internal connections. Of the total \$20,772,658 in contracted-for services, \$13,456,908 represent non-recurring charges,<sup>2</sup> while only \$7,315,749 are recurring charges. The non-recurring or one-time charges reflect ENA's costs of

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telecommunications." Report at ¶ 67. This is highly relevant to the Department's Form 471 Application in which ENA and the Department take the contrary and incorrect position that the substantial local telecommunications services they propose to lease from BellSouth (which are necessary to connect the customer premises equipment at the school locations to the ISP POP sites) constitute "Internet Access service." See Department's Form 471 Application, Block 5, Item 15.

<sup>2</sup> These figures are arrived at by adding all the non-recurring charges illustrated in the ENA Proposal for Service Levels 1-8 during the initial six months of the contract (reflecting a reduction in Level 1, one-time charges for "Basic Network" from \$7.95 million as it initially appeared to \$3,722,656). See ISIS 2000 Objection, Attachment I, p.3, ISIS 2000 Second Supplement to Objection. p.3, fn.3.

acquiring internal connection and wide-area network equipment and related equipment and services for use by the Department, much or all of which would be ineligible for funding under either Section 54.507(g) or Section 54.506, if directly categorized as such.

A simple comparison to the overall pattern of funding requests shows the fallacy of this approach. Compared to the Department's 100% "Internet access" application, the total requested reimbursement for Internet access service made by all applicants constitutes only approximately 4% of the total requested funding for all services. (Telecommunications services represent approximately 33%, whereas internal connections constitute approximately 63% of overall requested funding.) The Department's reimbursement request of approximately \$14.3 million for six months of Internet access service alone constitutes over 16% of the total demand of \$88.2 million for Internet access made by all 30,000 applicants.

The Department has taken the position that this approach is proper because the Commission has placed no limits on what is deemed to constitute Internet access service. As described by the Department official responsible for the contract during a state hearing reviewing the Department's selection of ENA's proposal:

COMMISSIONER HAWKINS: Jackie, would you mind re-explaining to me what I thought I understood you to say awhile ago as far as the FCC says you can and can't do? [sic]

MS. SHRAGO: It is very clear that the State cannot submit expenditures for owning a network. So the only thing about what Mr. Ney has said that is correct, is that we purchase a network prior to January 1. None of those expenditures are eligible.

However, the application from ENA does not relate to those expenditures in any way, shape or form. The FCC entirely allows the obtaining of services where we pay both a one time charge and a recurring charge; that is the way the form is layed [sic] out and that is possible. The FCC has made no ruling about how a service provider breaks down its cost.

There are no rulings whatsoever about how salvage value is treated or how existing networks might be treated in terms of any transfer, okay? So I would just assert that Mr. Ney is incorrect in terms of the FCC.

Now I will also tell you that I have read some 3,500 to 4,000 pages of information from the FCC. I have depended a great deal on an attorney, who is a lot more used to reading this than I am, but I have gotten very, very familiar over the last 15 months with this information. I just entirely assert that Mr. Ney misunderstands because in part of his misunderstanding of what a service provider can do and what a state can do. A state cannot do certain things; a state cannot purchase equipment. There are no limitations, none, on what a service provider can purchase in order to deliver its service.

The FCC entirely expects that what we would do is go through a competitive procurement process, the basic principles of it, go through a competitive procurement process and make sure it agrees with state rules and buy the services. Don't buy equipment and manage it yourself; buy services.<sup>3</sup>

Even before the adoption of Section 54.507(g), the error of this approach was obvious. Telecommunications services, Internet access service, and internal connections are distinct and separate categories which were not intended to overlap each other at the option of the applicant. Wide-

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<sup>3</sup> Transcript of State Review Committee Meeting, April 3, 1998, p. 43 (emphasis added).

area network equipment and teacher training not eligible for funding directly were not intended to be made eligible for funding simply by having it purchased by the contractor and calling the ineligible equipment or service a component of Internet access.<sup>4</sup> This requirement is now further confirmed by Section 54.507(g), which is enforceable only to the extent that the correct service or equipment category is used by the applicant.

For example, under the guise of Internet access, the Department's application requests substantial funding for the acquisition of routers, hubs, servers and other internal equipment within each school.<sup>5</sup> Similar to customer premises equipment not allowed to be owned by the telecommunications service provider under established Commission rules, this is equipment located on the customer's premises beyond the generally understood drop-off point for telecommunications and Internet access service. See, e.g., Section 68.3 of the

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<sup>4</sup> If this were allowable, any goods or services provided in conjunction with Internet access could qualify for funding, including such obviously ineligible items as carpeting, office space, and asbestos removal.

<sup>5</sup> ISIS 2000 has demonstrated in its previous pleadings that the Department and ENA seek funding for substantial internal connections, and what otherwise would be considered ineligible wide area network equipment and services. The particular types of internal connections and other equipment to be purchased by ENA is impossible to pinpoint because it is not detailed in any manner in either the ENA Proposal or the Department's Contract with ENA. The only explanations regarding exactly what is being purchased are ENA's vague descriptions of "service levels" contained in its Proposal. See ISIS 2000 Objection, Attachment I, p. 2. Thus, there could be substantial charges for ineligible items such as carpeting, office space, hiring technical employees, paint, asbestos removal, or company cars which would be impossible to detect under either the ENA Proposal, the ENA Contract or the Department's Form 471 Application.

Commission's rules. If such internal equipment was deemed to constitute a legitimate element of Internet access service, nothing would prevent the ultimate personal computer ("PC") terminals at the end of the line (a clearly ineligible equipment cost) from being funded as Internet access.

The error of this approach is further shown by the inability to apply the extended funding rules, adopted in the Fourth R&O, to the Department's application in any rational manner. The Commission has directed that funding commitments for telecommunications services and Internet access requested in pending applications be extended an additional six months (through June 30, 1999) because these services "are generally provided at regular, monthly intervals and are billed on a monthly, recurring basis." Fourth R&O, ¶ 12. The ENA contract, however, does not provide for similar monthly payments for Internet access which may be projected unchanged into the future. Quite to the contrary, the levels of anticipated cost of so-called Internet access service between the July-December 1998 period (\$20,772,658) and the January-June 1999 period (\$13,963,667) are substantially different, making the simple extension of initially requested funding required by new Section 54.507(b) over the longer period impossible.



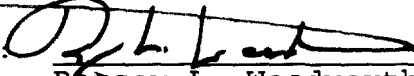
### Conclusion

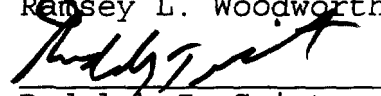
Under the new priority funding rules, the Department's application becomes even more violative of basic Commission rules and policies governing the Schools and Libraries Program. The Commission's amended priority funding rules are not intended to permit reimbursement for otherwise non-fundable equipment and services simply because they are labeled as Internet access service on the Form 471. The manner in which the Department has elected to posture its application renders it impossible to process the application by any rational standard, thus making it ineligible for funding in the current USF funding year.

Respectfully Submitted,

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**CERTIFICATE OF SERVICE**

I, Rudolph J. Geist, hereby certify that copies of the foregoing Third Supplement to Objection to Application and Request for Expedited Declaratory Ruling were served on this 15<sup>th</sup> day of July, 1998, via hand delivery, to the following individuals at the addresses listed below:

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